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AZ CORP COMMISSION  
DOCKET CONTROL

**BEFORE THE ARIZONA CORPORATION COMMISSION**

**KENT MAERKI: IN PRO PER**

In the matter of:  
KENT MAERKI and NORMA JEAN  
COFFIN, husband and wife,

) Docket No. S-20897A-13-0391

DENTAL SUPPORT PLUS FRANCHISE,  
LLC, an Arizona limited  
liability company,

RESPONDENTS' RESPONSE TO  
SECURITIES DIVISION'S RESPONSE  
RE: FILING OF CHAPTER 7  
BANKRUPTCY AND CONTINUANCE FOR  
FILING OF CLOSING BRIEF

## Respondents

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The Securities Division's position that, "Mr. Maerki's understanding is incorrect," may be incorrect. The Securities Division stated, "Actions by the Arizona Corporation Commission are not stayed by a bankruptcy filing as such actions are an exercise of police and regulatory power," which is ambiguous.

To determine if the Securities Division's Case No. S-20897A-13-0391 is exempted from the automatic bankruptcy stay, it may be prudent for the court to exercise caution and request the Bankruptcy Court's permission before proceeding with the excepted conduct suggested by the Securities Division.

Upon the filing of a bankruptcy, an automatic stay goes into effect. The automatic stay provides a debtor immediate and automatic protection from the collection efforts of creditors. Thus, one purpose of the automatic stay is to provide a time cushion for the bankruptcy estate

1 to organize. In a Chapter 7 case, the automatic stay provides time for the trustee to identify and  
2 collect the property of the estate that will be used for distribution to the creditors.

3 In the words of one group of bankruptcy commentators, "[c]reditors' collection efforts must  
4 be stopped quickly in order to accomplish the orderly and even administration of the debtor's  
5 property and financial affairs that is a chief goal of bankruptcy."<sup>1</sup>  
6

7 Section 362 of the Bankruptcy Code requires all collection efforts to cease immediately  
8 upon the filing of a voluntary or involuntary bankruptcy petition. Section 362(a) provides that  
9 the filing of a bankruptcy petition operates as a stay against the following activities:  
10

- 11 1. the commencement or continuation, including the issuance or employment of process, of  
12 a judicial, administrative, or other action or proceeding against the debtor that was or  
13 could have been commenced before the commencement of the case under this title, or to  
14 recover a claim against the debtor that arose before the commencement of the case  
15 under this title;  
16
- 17 2. the enforcement, against the debtor or against property of the estate, of a judgment  
18 obtained before the commencement of the case under this title;  
19
- 20 3. any act to obtain possession of property of the estate or of property from the estate or to  
21 exercise control over property of the estate;  
22
- 23 4. any act to create, perfect, or enforce any lien against property of the estate;  
24
- 25 5. any act to create, perfect, or enforce against property of the debtor any lien to the extent  
26 that such lien secures a claim that arose before the commencement of the case under  
27 this title;  
28

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<sup>1</sup> 1 David G. Epstein, Steve H. Nickles & James J. White, BANKRUPTCY § 3-1 at 77 (West Practitioner Series 1992) (hereinafter cited as "Epstein et al.").

- 1       6. any act to collect, assess, or recover a claim against the debtor that arose before the
- 2           commencement of the case under this title;
- 3       7. the setoff of any debt owing to the debtor that arose before the commencement of the
- 4           case under this title against any claim against the debtor; and
- 5       8. the commencement or continuation of a proceeding before the United States Tax Court
- 6           concerning the debtor.<sup>2</sup>

7  
8       It is worth noting that the automatic stay is truly "automatic," in that it takes effect instantly  
9  
10      upon the filing of a bankruptcy petition and is effective against most entities, including the  
11      debtor,<sup>3</sup> and regardless of whether the entity is aware of the filing.<sup>4</sup>

12      Subsection 362(b) lists 18 activities that are exempt from the automatic stay.<sup>5</sup> In  
13      general, the exemptions are specific and include activities such as the continuation of a criminal  
14      action against the debtor,<sup>6</sup> the exercise by government of its police or regulatory powers,<sup>7</sup> and  
15      the collection of alimony and child support.<sup>8</sup> When an exemption applies, the exempted conduct  
16      is automatically allowed without the need for a court-ordered relief from the stay.<sup>9</sup> **However,**  
17      **as discussed below, seasoned bankruptcy practitioners often exercise caution and**  
18      **request Bankruptcy Court permission before proceeding with the excepted conduct.**

19  
20      The automatic stay concludes upon the happening of certain occurrences listed in  
21      section 362(c)-(e), such as the closing or dismissal of the case, or the discharge of the debtor.  
22

23  
24      <sup>2</sup> 11 U.S.C. § 362(a). <sup>3</sup> *In re Shapiro*, 124 B.R. 974, 981 (Bankr. E.D. Pa. 1991).

25      <sup>3</sup> *In re Shapiro*, 124 B.R. 974, 981 (Bankr. E.D. Pa. 1991).

26      <sup>4</sup> Epstein et al. at 78.

27      <sup>5</sup> 11 U.S.C. § 362(b).

28      <sup>6</sup> 11 U.S.C. § 362(b)(1).

<sup>7</sup> 11 U.S.C. § 362(b)(4).

<sup>8</sup> 11 U.S.C. § 362(b)(2).

<sup>9</sup> See *Matter of Daugherty*, 117 B.R. 515, 518 (Bankr. D. Neb. 1990).


1 When the automatic stay ends, each creditor is allowed to enforce only those rights that have  
2 survived bankruptcy, but only in the form and amount that bankruptcy law has left them.<sup>10</sup>

3 The stay prescribed by section 362(a) provides a very broad range of protection to the  
4 debtor and other constituencies of a bankruptcy estate. **However, again, subsection 362(b)**  
5 **also carves out a set of express exceptions to the stay and there are many instances in**  
6 **which the distinction between what is covered by the stay and what is excluded may not**  
7 **be clear.** These areas of potential ambiguity are too numerous to catalogue. Nevertheless, some  
8 areas, particularly in which there have been recent developments, are worthy of mention.  
9

10 Many actions that may relate to or establish a claim in a bankruptcy have the  
11 characteristics of the government's exercise of its police or regulatory powers, exempted from  
12 the stay by subsection 362(b)(4). Legislative history generally favors the government's position  
13 when its enforcement action is **not** intended to protect the government's interest in the  
14 debtor's property, but relates to matters of public safety and welfare and is intended to  
15 effectuate public policy. With this case, there are no public safety or welfare issues for which  
16 the Securities Division needs to exercise its police or regulatory powers. Therefore, a stay is  
17 appropriate.  
18

19 While we, the Respondents, requested a continuance until October, 31, 2015, or later,  
20 the Securities Department objected and suggested a 30-day continuance until October 18, 2015  
21 for both sides to file their closing briefs, we would like to agree on the date Friday, October 23,  
22 2015 for filing the closing briefs.  
23

24 **DATED: September 12, 2015**

25  
26   
27 Kent Maerki  
28 In Pro Per

29 <sup>10</sup> Epstein et al. at 81.

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2  
3 ORIGINAL and 12 copies of the  
4 forgoing filed this 14<sup>th</sup> day  
of September, 2015 with:

5 Docket Control  
6 Arizona Corporation Commission  
1200 W. Washington St.  
7 Phoenix, AZ 85007

8 COPY of the foregoing hand-  
9 Delivered the 14<sup>th</sup> day of  
September, 2015 to:

10 The Honorable Marc E. Stern  
11 Administrative Law Judge  
Arizona Corporation Commission  
12 1200 W. Washington St.  
Phoenix, AZ 85007  
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